



EUROPEAN UNION



Brussels, 21 March 2012

7964/12

PRESSE 129

**Declaration by the High Representative, Catherine Ashton, on  
behalf of the European Union on the occasion of the  
International Day for the Elimination of Racial Discrimination  
on 21 March 2012**

"The International Day for the Elimination of Racial Discrimination is an occasion to underline the European Union's unwavering commitment to fighting all forms of racism and xenophobia. Racial discrimination is contrary to the values on which the EU is based, and we work hard both at home and around the world to stamp it out. Our commitment takes many forms - legislation, awareness-raising campaigns and support to projects run by civil society.

Global efforts to combat racism are based on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). We urge all states to ratify and implement the Convention as soon as possible."

---

**P R E S S**

---



DE EUROPESE UNIE



Brussel, 21 maart 2012

(OR. fr)

7964/12

PRESSE 129

**Verklaring van hoge vertegenwoordiger Catherine Ashton  
namens de Europese Unie  
naar aanleiding van de Internationale Dag  
ter bestrijding van rassendiscriminatie op 21 maart 2010**

"De Europese Unie wil op de Internationale Dag ter bestrijding van rassendiscriminatie haar voortdurende engagement voor de bestrijding van alle vormen van racisme en vreemdelingenhaat onderstrepen. Rassendiscriminatie is in strijd met de waarden waarop de EU is gebaseerd en wij leveren zowel binnen de EU als elders in de wereld onverdroten inspanningen om deze discriminatie uit te bannen. Dat gebeurt onder meer in de vorm van wetgeving, bewustmakingscampagnes en steunverlening aan projecten van maatschappelijke organisaties.

De wereldwijde inspanningen voor de bestrijding van racisme zijn gebaseerd op het Internationaal Verdrag inzake de uitbanning van alle vormen van rassendiscriminatie (ICERD). Wij roepen alle staten op dit verdrag zo spoedig mogelijk te ratificeren en ten uitvoer te leggen."

---

**P E R S**

---

Luxembourg, 3 May 2010

## **European Commission swears oath to respect the EU Treaties**

***The College of Commissioners has today sworn a solemn declaration at the European Court of Justice in Luxembourg, pledging to respect the EU Treaties and to be completely independent in carrying out their duties during their mandate. For the first time, the Commissioners also explicitly pledged to respect the new Charter of Fundamental Rights.***

Commission President, José Manuel Barroso said, *"The oath of independence and respect for the EU Treaties is more than a symbolic act. The European Commission is a unique institution and the Commissioners have today made clear that they will uphold all the principles and values enshrined in the Treaties and the Charter of Fundamental rights"*.

### **Background**

According to Article 245 of the Treaty on the Functioning of the European Union (a provision included already in previous Treaties), all members of the European Commission are required to give "a solemn undertaking" when entering upon their duties to respect their obligations under the EU Treaties. Traditionally, this solemn undertaking is made before the European Court of Justice in Luxembourg in the first months after the start of the mandate of a new European Commission. As the current Commission, which took office on 10 February 2010, is the first Commission that works under the new Treaty of Lisbon, the wording of the solemn undertaking was adapted to the new legal situation and includes also a reference to the EU Charter of Fundamental Rights.

A copy of the solemn declaration can be found in annex.

## **ANNEX**

### **SOLEMN DECLARATION**

**Before the**

### **COURT OF JUSTICE OF THE EUROPEAN UNION**

*pursuant to Article 17 of the Treaty on European Union and Article 245 of the Treaty on the Functioning of the European Union.*

---

- Having been appointed as a Member of the European Commission by the European Council, following the vote of consent by the European Parliament

*I solemnly undertake:*

- *to respect the Treaties and the Charter of Fundamental Rights of the European Union in the fulfilment of all my duties;*
- *to be completely independent in carrying out my responsibilities, in the general interest of the Union;*
- *in the performance of my tasks, neither to seek nor to take instructions from any Government or from any other institution, body, office or entity;*
- *to refrain from any action incompatible with my duties or the performance of my tasks.*

*I formally note the undertaking of each Member State to respect this principle and not to seek to influence Members of the Commission in the performance of their tasks.*

*I further undertake to respect, both during and after my term of office, the obligation arising therefrom, and in particular the duty to behave with integrity and discretion as regards the acceptance, after I have ceased to hold office, of certain appointments or benefits.*



[antifascist.eu](http://antifascist.eu)





## **Yad Vashem and Council of Europe sign Memorandum of Understanding**

30 May 2012

Yad Vashem and the Council of Europe have signed a Memorandum of Understanding to promote Holocaust education throughout the 47 member states of the Council.

(Communicated by the Yad Vashem Spokesperson)

Yad Vashem and the Council of Europe have signed a Memorandum of Understanding to promote Holocaust education throughout the 47 member states of the Council. Avner Shalev, Chairman of Yad Vashem and Thorbjorn Jagland, Secretary General of the Council of Europe signed the agreement at Yad Vashem.

The memorandum formalizes an ad-hoc relationship going back some 15 years, and encourages new and varied programs to enhance cooperation in the future. Among the items included are exploring the organization of a Holocaust education policy forum at Yad Vashem for educational policy makers, and fostering and developing cooperative relationships between member states and Yad Vashem, particularly those states that do not yet have a relationship with Yad Vashem. This will allow for greater cooperation in the field of commemoration, research and education, including participation of educators in seminars at Yad Vashem's International School for Holocaust Studies. Currently, the International School works with some 30 of the 47 member states of the COE.

Yad Vashem Chairman Avner Shalev said, "This agreement denotes willingness to deepen and enhance Holocaust education in Europe, and to encourage teacher training and to reconstitute historical awareness. I am pleased that the Council of Europe sees the International School for Holocaust Studies of Yad Vashem as the most appropriate professional body to lead this process."

The International School for Holocaust Studies of Yad Vashem currently conducts some 70 seminars annually for educators from abroad, and produces material in 20 languages.

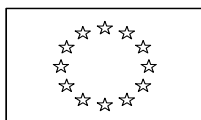
PRESS RELEASE - Israel Ministry of Foreign Affairs



## **Council of Europe**

Since 1999, the Council of Europe and the International School for Holocaust Studies at Yad Vashem have worked in cooperation to promote issues of joint concern in Council of Europe member states, such as teaching the history of the twentieth century and Holocaust education and remembrance. In 2003, an international forum was organized in conjunction with the Council of Europe. During this seminar, participants from ten European nations exchanged ideas on their respective historical narratives and explored questions relating to various techniques and tools to foster education about the Holocaust. A volume based on the proceedings of this forum, including resources and lesson plans, was published within the framework of the Council of Europe's project, "Teaching Remembrance: Education for the Prevention of Crimes against Humanity."

By: Yad Vashem



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE

**EUROPEAN COMMISSION**

*and*

**THE STATE OF ISRAEL**

**V<sup>th</sup> Seminar on the Fight Against Racism, Xenophobia and  
Antisemitism**

**26-27 October 2011**

**26 October**

*Room 07/214 of the Charlemagne building  
170, rue de la Loi, 1046 Brussels*

**8.45-9.00**      *Arrival of the participant and registration*

**9.00-9.30**      ***Opening remarks***

- ***Mr Paul Nemitz***, Director Fundamental Rights and Citizenship, Directorate General Justice, European Commission
- ***Ambassador Yacov Hadas-Handelsman***, Head of Mission of Israel to the EU

**9.30-11.00**      ***Racism in the European Union and Israel: data and trends***

*Chair: Mr Emmanuel Crabit, Head of Unit for Fundamental Rights and Rights of the Child, Directorate General Justice, European Commission*

- ***Mr Iannis Dimitrakopoulos***, European Union Agency for Fundamental Rights (FRA)
- ***Dr. Haim Fireberg***, Senior Researcher, The Kantor Center for the Study of Contemporary European Jewry, Tel-Aviv University

*Contribution to the discussion (in particular):*

- ***Ms Shannon Pfohman***, European Network Against Racism (ENAR)

**11.00-11.15**      *coffee break*

**11.15-12.45      Access to justice: effective redress against racist discrimination**

- **Ms Pia Lindholm**, Directorate General Justice, European Commission
- **Dr. Haim Fireberg**, Senior Researcher, The Kantor Center for the Study of Contemporary European Jewry, Tel-Aviv University

*Contribution to the discussion (in particular):*

- **Ms Nathy Rass-Masson** (country expert France) and **Ms Emma Psaila** (country expert Malta), coordinators of the "Comparative study on access to justice in gender equality and anti-discrimination law"
- **Ms Anne Gaspard**, Executive Director, European Network of Equality Bodies (Equinet Europe)
- **Ms Shannon Pfohman**, European Network Against Racism (ENAR)

**12.45-14.15      lunch**

**14.15-15.45      Fight against racist hate speech: new developments**

- **Ms Maria Fernandez-Molinero**, Directorate General Justice, European Commission
- **Adv. Talia Na'amat**, Attorney, Legal Researcher, The Kantor Center for the Study of Contemporary European Jewry, Tel-Aviv University

*Contribution to the discussion (in particular):*

- **Mr Mathias Hellmann**, LL.M., Head of Division , Federal Ministry of Justice, Germany

**15.45-16.00      coffee break**

**16.00-17.30      Preventing racism: education, training and remembrance activities**

- **Mr Pavel Tychtl**, Directorate General Communication, European Commission
- **Ms Eva Sobotka**, European Union Agency for Fundamental Rights (FRA)
- **Dr. Robert Rozett**, Director of Libraries, Yad Vashem

*Contribution to the discussion (in particular):*

- **Ms Brittney Bolin**, Task Force for International Cooperation and Holocaust Education, Remembrance and Research (ITF)
- **Ms Claire Herrmann**, Directorate General Education and Culture, European Commission
- **Małgorzata Pakier**, Educational Programs Specialist Coordinator, The Museum of the History of Polish Jews

.....

27 October

**Kazerne Dossin**  
**Memorial Museum and Documentation Centre on Holocaust and**  
**Human Rights**

*(Edgard Tinellaan 1c, 2800 Mechelen)*

- 9.15** *Transport of all participants (both delegations) by a minibus to Mechelen from Charlemagne building*
- 10.00-11.30** *Arrival in Mechelen – welcome coffee and presentations (questions-answers):*
- **Mr Georges Ingber**, Member of the Steering Committee of Kazerne Dossin, former European Commission official
  - **Ms Odile Remy**, Vice-Director (pedagogical project)
  - **Ms Patricia Ramet**, “Give them a face” project
  - **Sir Natan Ramet**, Founding President and survivor of Auschwitz-Dachau
- 11.30-12.00** *Visit of the construction and renovation site of the new Memorial Museum, contact with the architect **Professor Bob Van Reeth***
- 12.00-13.30** *Lunch followed by a lecture by **Professor Van Goethem**, curator of Kazerne Dossin, questions-answers*
- 13.30-14.00** *Closing remarks by **Mr Emmanuel Crabit**, Head of Unit for Fundamental Rights and Rights of the Child, Directorate General Justice, European Commission and **Ambassador Gideon Behar**, Director of the Department of Combating Anti-Semitism, Israeli Ministry of Foreign Affairs, and **Mr Ronen Gil-Or**, Deputy Head of the Israeli Mission to the EU*
- 14.00** *Transport by a minibus to Charlemagne building*

.....

12.25.06

***Holocaust Denial Laws and Other Legislation Criminalizing Promotion of Nazism***

**Prof. Michael J. Bazylar**

**von Oppenheim Research Fellow**

**International Institute for Holocaust Studies, Yad Vashem**

**Professor of Law, Whittier Law School, California, USA**

**www.michaelbazylar.com**

**bazylar@aol.com**

**I. Introduction**

As a result of the enormous suffering inflicted upon the world by the Nazi regime, and especially Europe, a number of European countries have enacted laws criminalizing both the denial of the Holocaust and the promotion of Nazi ideology.

The aim of these laws is to prevent the resurrection of Nazism in Europe by stamping out at the earliest opportunity – or to use the phrase “to nip it in the bud” – any public reemergence of Nazi views, whether through speech, symbols, or public association.

Individuals and groups today promoting Nazism, often called neo-Nazis, do not limit their ideology just to antisemitism. Part and parcel of their message also involves hatred of other minority groups, most often individuals of African, Arab and Asian descent, and immigrants from non-European nations.

As a result, a number of the European laws banning neo-Nazi messages also ban racist and hate speech. Some also criminalize the denial of other genocides, most prominently the genocide of the Armenians.

The anti-Nazi laws do not exist in every European country. Presently, the following European countries have some legislation criminalizing the Nazi message, including denial of the Holocaust: Austria, Belgium, the Czech Republic, France, Germany, Liechtenstein, Lithuania, the Netherlands, Poland, Romania, Slovakia, Spain and Switzerland. Holocaust denial is also illegal in Israel.

Some of these countries, like Germany and Austria, take these laws very seriously and vigilantly prosecute both speech and behavior having any reference to Nazis and Nazism. Others, like Lithuania and Romania, despite laws on the books, enforce them sporadically.

A last set of countries put a higher value on free speech over suppression of neo-Nazism and freely allow promotion of the Nazi message. In these countries, freedom of the press and freedom of speech are vehemently upheld even to the detriment of other rights. These countries include the United Kingdom, Ireland and the Scandinavian nations.

In 2005, the European Union considered enacting common rules banning or restricting the use of Nazi symbols and promotion of Nazi ideology, including Holocaust denial. However, the EU's Executive Commission eventually recommended against such EU-wide legislation, noting that it would be "unwise" to seek a ban across the 25-nation bloc, citing the differing views in the countries involved.

One example of the disparity in European laws dealing with promotion of Nazi ideology concerns the availability of Hitler's notorious autobiography, *Mein Kampf* [My Struggle]. Officially, *Mein Kampf* cannot be purchased in Germany, Hungary, Israel, Latvia, Norway, Portugal, Sweden and Switzerland, but the book is readily available in Russia, Romania, the United States and the U.K.

In the United States, the First Amendment protects the freedoms of speech, press and association; such guarantees prohibit suppression of the Nazi message. As a result, neo-Nazi parties are completely legal (just like during the Cold War years, the Communist Party of the United States was allowed to exist) and their antisemitic and racist messages are protected by the Constitution. The only limitation on such speech, according to the Supreme Court, are calls for immediate violence.

It should also be noted that a multilateral human rights treaty to which 160 countries are parties, the International Covenant on Civil and Political Rights, obliges member nations to pass domestic legislation prohibiting advocacy of national, racial or religious hatred. As a result, countries that do not specifically criminalize denial of the Holocaust do prosecute individuals who promote hate speech. The line dividing these two types of conduct – Holocaust denial and hate speech – is murky and individuals engaging in Holocaust denial usually do so in the context of making Jew-hating statements. These individuals are then prosecuted for violating hate speech prohibitions.

## II. Western European nations with laws banning denial of the Holocaust and promotion of antisemitic and racist speech

Let me discuss three representative Western European countries with Holocaust denial laws – Germany, Austria and France – and set out how these laws are applied in these countries.

### A. Germany

#### 1. The Law

In the aftermath of World War II, the National Socialist Party (the Nazi party) of Germany was branded a criminal organization and therefore banned. The International Military Tribunal at Nuremberg in 1946 likewise ruled that the Nazi Party was a criminal organization.

German law, however, does not just stop at banning the Nazi Party. As part of efforts to overcome its Nazi past, Germany has criminalized denial of the Holocaust and also

banned the use of insignia related to Hitler's regime and, as mentioned above, written materials or images promoting the Nazi message.

Section 130 of the German Penal Code prohibits denial or playing down of the genocide committed under the National Socialist regime (§ 130.3), including through dissemination of publications (§ 130.4). This includes public denial or gross trivialization of international crimes, especially genocide/the Holocaust.

The law has been amended a number of times since its initial passage in 1985.

In 1985, Holocaust denial was outlawed as an 'insult' to personal honor (i.e. an 'insult' to every Jew in Germany) and a penalty was set under the 1985 law of up to one year in prison or a fine.

In 1994, Holocaust denial became a criminal offense under a general anti-incitement law. The law states that incitement, denial, approval of Nazism, trivialization or approval, in public or in an assembly, of actions of the National Socialist regime, is a criminal offense. The 1994 amendment increased the penalty to up to five years imprisonment. It also extended the ban on Nazi symbols and anything that might resemble Nazi slogans.

A special clause in Article 130 provides for community service for offenders under eighteen years of age.

The sale of Hitler's notorious autobiography, *Mein Kampf* [My Struggle], is also banned in Germany and in a number of other European countries occupied by Nazi Germany, as discussed earlier.

## 2. Application

The German anti-Nazi law is strictly interpreted. For example, a German man went on trial in September 2006 for displaying Nazi symbols including swastikas even though he was campaigning against far-right extremism - the swastikas had lines drawn through them representing rejection.

State Prosecutor Bernhardt Häussler urged a Stuttgart state court to fine Jürgen Kamm, owner of a mail order company that sells anti-Nazi t-shirts and badges. 6,000 Euros [\$7,610] for selling merchandise that carry the swastikas and other Nazi symbols through his mail-order business. "Swastikas shouldn't be displayed in such a striking way," Häussler said, adding that he hopes the outcome of this trial will bring about a complete ban of Nazi symbols in public spaces.

Defense attorney Michael Wolff argued that Kamm was using the symbols to fight against neo-Nazis and other far-right extremists. Kamm explained: "It should not be illegal to use the symbols against Nazis."

The prosecutor disagreed. He argued that German law strictly forbids the use of symbols associated with the Nazi regime, no matter in what context they are used. He contended that it is irrelevant what the intent of the wearer is, and also that it did not matter that the symbol had been altered. The symbol should simply not be used publicly.

Perhaps such a literal interpretation of the law seems to be going too far. Several politicians, including the head of the Green party Claudia Roth, in reaction reported themselves to prosecutors in Stuttgart for wearing anti-Nazi T-shirts and buttons that include the banned symbols. Roth called the trial “a gift to the far-right.” Moreover, Germany's federal court of justice ruled in 1973 that it was not illegal to produce a swastika providing it had clearly been altered for the purposes of protesting against Nazism.

Nevertheless, the judge found Kamm guilty and fined him 3,600 Euros [\$4,500]. The case is presently on appeal.

A much more serious case of Holocaust denial prosecution involves the notorious denier Ernst Zündel. German-born Zündel, now in his 60's, emigrated in 1958 to Canada, from where he began disseminating in print form a substantial amount of material denying the Holocaust. In 1974, Zündel published a booklet penned by a British Holocaust denier entitled *Did Six Million Really Die?* His audience became much larger with the rise of the Internet and through the reach of a website created by his wife and webmaster, Ingrid Rimland, <[www.zundelsite.org](http://www.zundelsite.org)>, which includes references to such books as *Truth at Last—Exposed*. Because of free speech guarantees in the United States allowing Zündel to freely disseminate his views, however vile, the Zundelsite uses a U. S. based Internet service provider.

An excerpt from an article penned by Zündel in 1977 titled "Our New Emblem: The Best of Two Worlds" (referring to a design that merged a swastika and the American flag) and published in the magazine *White Power* is representative of his message:

Wherever we look, we White people find ourselves besieged by peoples of other races who compete aggressively against us for jobs, food, housing, education and above all -- power! The Jews are particularly adept at seizing or insinuating themselves into strategic positions in our society where they wield power far beyond the extent of their numbers....Through us, the White majority of Europe and America, the Jewish minority have obtained their advantages, including their Israel, their Federal Reserve, their World Bank and their International Monetary Fund. In exchange for these advantages, the Jews give us -- their White hosts -- wars, depressions, inflation, unemployment, energy shortages, higher and higher taxes and air piracy. Like sheep, they expect us to go down the road with them -- all the way to the kosher slaughterhouse. We White people of



America have done nothing so far which would frustrate the Jews' expectations or their ambitions of becoming the world's slave masters.<sup>1</sup>

Canada twice tried to prosecute him for his activities under their laws criminalizing intentional dissemination of false news.<sup>2</sup> Even though he was twice convicted, Zündel's convictions were overturned by Canadian appellate courts. On appeal of his second conviction, the Supreme Court of Canada in 1992 declared the "spreading of false news" criminal statute as incompatible with Canada's free speech guarantees and therefore unconstitutional.

In 2005, Canadian immigration officials succeeded, after Zündel exhausted his judicial appeals process, to deport him back to Germany. In November 2005, he was brought to trial before a state court in Mannheim, Germany to face charges of incitement, libel and disparaging the dead. As of this writing, the trial still continues.

### 3. Growing Problem of Neo-Nazism in Germany and Need for Such Criminal Legislation

Despite this strict interpretation of the German so-called "Auschwitz lie" law, promotion of Nazi ideology in Germany is growing in two important areas: (1) music and (2) on the Internet.

#### a. *Skinhead music*

Germany's neo-Nazis are increasingly using music to spread their message, particularly among the unemployed youth of the former communist East Germany, according to experts on extremism in Germany.

In 2004, neo-Nazis applied for permission to hold 137 concerts, mostly in the poor eastern provinces of the former East Germany. Figures released by the Federal Office for the Protection of the Constitution show that from January to September 2005, the authorities had received 100 such requests and the "trend shows no sign of slowing down." The official added that the amount of racist audio and video material seized by German authorities had also increased.

Recently, the extreme right National Democratic Party (NPD) in Germany began using music as part of its strategy to spread racist, antisemitic and anti-capitalist messages to German youth by distributing thousands of free CDs in front of schools. A rap group called Dissau Crime released a song called "Zyklon D," named after the type of gas used by the Nazis in their gas chambers during the Holocaust.

---

<sup>1</sup> Cited and quoted by the ADL in [http://www.adl.org/learn/Ext\\_US/zundel.asp?xpicked=2&item=zundel](http://www.adl.org/learn/Ext_US/zundel.asp?xpicked=2&item=zundel).

<sup>2</sup> Section 177 of the Criminal Code of Canada punishes individuals for "knowingly publishing false news."

The impact of these messages cannot be ignored. In 2004, the NDP claimed its first regional success when it obtained 9.2 percent of the votes in a regional election in the German state of Saxony. According to Patrick Moreau, a French researcher who studies extremist groups in Germany, "In the new states, where unemployment stands at up to 40 percent, the NPD offers the youth a haven where they feel they are among friends, where they can drink beer and listen to music....It is a slow politicization through music."<sup>3</sup>

German authorities have tried to clamp down on the spread of racist music. In 2005, the lead singer of the German extremist band "Landser"-- Michael Regener -- was sentenced to three years in prison for belonging to a criminal organization. In a symbolic defiance of authorities, Regener gave a performance on the evening before he was going to enter prison.

### *b. The Internet*

The main purveyor of neo-Nazi hate speech (including music), however, is still the Internet. For music, the neo-Nazi websites offer free downloading of their antisemitic and racist songs. These sites are set up outside Germany, such as in the United States and Denmark, where their existence is not prohibited (see further discussion below).

## **B. Austria**

### **1. The Law**

Under a criminal statute going back to 1945 and amended in 1992, Austria -- like Germany -- criminalizes denial of the Holocaust by calling for a prison term of up to ten years for anyone who "denies, grossly plays down, approves or tries to excuse the National Socialist genocide or other National Socialist crimes against humanity in a print publication, in broadcast or other media." A related statute imposes the same criminal sanction upon anyone who "performs activities inspired by National Socialist ideas."

### **2. Application**

The most publicized Holocaust denial trial in Austria took place in February 2006, when an Austrian court convicted British writer and discredited historian David Irving (see discussion below under "Great Britain") of Holocaust denial.

In a series of speeches made in Austria in 1989, Irving contended that most of those who died in Auschwitz and other concentration camps were not murdered by gas or other means but rather succumbed to disease. Irving left the country before an arrest warrant

---

<sup>3</sup> "Neo-Nazis Spreading Message and Recruiting Through Music," *Deutsche Welle*, December 12, 2005, available at < <http://www.dw-world.de/dw/article/0,2144,1827739,00.html>>.

issued against him could be executed. Upon his return to Austria seventeen years later, in November 2005, he was taken into custody.

During his February 2006 trial, Irving claimed that he had again changed his views on gas chambers. He told the judge that he is now convinced, contrary to his earlier assertions in the London defamation trial (see discussion below), at the Zündel trial, and in 1989 that gas chambers did in fact exist. However, he continued to doubt the figure of 6 million Jews killed. After a one-day hearing, Irving was sentenced to three years in prison.

In December 2006, after serving thirteen months in prison, Irving was freed by a Vienna appellate judge who converted two-thirds of Irving's sentence into probation. The judge explained that since the crime was committed a long time ago, seventeen years earlier, it should be a mitigating circumstance in determining Irving's ultimate sentence. Irving was ordered to leave Austria, and he returned to London the next day.

### C. France

#### 1. The Law

French law does not explicitly criminalize denial of the Holocaust. Rather, "Law No 90-615 of 13 July 1990 tending to repress any racist, antisemitic or xenophobic acts," commonly known in France as the Gayssot Law (Loi Gayssot) after its author, makes it an offense to question the existence of "crimes against humanity" as they are defined in the Nuremberg Charter.

Article R645-1 of the French Penal Code prohibits the public display of Nazi uniforms, insignias and emblems.

In October 2006, the French National Assembly also adopted a bill making it a crime to contest that the massacres of Armenians in the Ottoman Empire in 1915 constituted genocide. The bill, yet to become law in France as of the time of this presentation, was heavily debated both in France and abroad. In retaliation for the National Assembly's vote, Turkey suspended military relations with France. In 2007, the bill will be considered by the French Senate and then, if passed by that chamber, by French President Jacques Chirac who must sign it into law.

#### 2. Application

In October 2006, French judicial authorities opened a judicial investigation to determine whether French far-right leader Jean-Marie Le Pen should be tried for comments denying the brutality of the Nazi occupation of France during World War II. As a result, a French investigating magistrate is presently considering whether to recommend prosecution of Le Pen for "justifying war crimes" and "complicity in contesting crimes against humanity." Le Pen has a history of making statements disparaging the Holocaust. His

most infamous statement, for which he was not prosecuted, was to label the gas chambers a mere “detail of the history of World War II.”

The most notorious Holocaust denier in France, however, is Robert Faurisson, a former professor of literature at the University of Lyon. Faurisson has been prosecuted on several occasions for his public statements and publications denying the Holocaust. In 1983, Faurisson was fined and given a three month suspended sentence for "racial defamation" after making remarks on a radio show supporting Holocaust denial. In 1990, Faurisson gave an interview to a far-right magazine where he described the gas chambers as a "myth" and was thereupon charged under the Gayssot Law. He was convicted and sentenced to a 250,000 franc (\$50,000) fine of which 100,000 francs (\$20,000) was suspended. Faurisson appealed his conviction all the way to the European Court of Human Rights, which upheld the Gayssot Law as not being incompatible with European guarantees of freedom of expression, and dismissed Faurisson's appeal.

France was also the forum for another famous Holocaust denial-related case. In LICRA v. Yahoo! Inc., a French Jewish student group, *Ligue contre le racisme et l'antisemitisme et Union des etudiants juifs de France*, obtained a court order in 2000 ordering Yahoo! to modify its website so that users in France are denied access to that portion of the site listing auction sales of memorabilia from the Nazi period. The French court found that the availability of such items in France through the Internet, even though the sales were conducted in the United States, to be in violation of the French law cited above, Article R645-1, banning the public display of Nazi symbols.

Yahoo! did not appeal the French court decision but instead brought a separate action in the United States seeking to bar its application in the United States on the grounds that it violated the First Amendment. The lower court granted Yahoo!'s application, but a federal appellate court in 2006 reversed and dismissed the case on the ground that American law cannot regulate French criminal legislation when it is applied in France.

### III. Eastern Europe

Western European nations are not the only ones to criminalize denial of the Holocaust. Eastern European nations after their liberation from Communism have also followed suit, but with a wrinkle. For example, in November 2006, the Estonian government approved a draft law making it a crime to display Nazi-era symbols in public. Because of its history of Soviet occupation, Estonia also added a prohibition against the public display of Soviet-era symbols, such as the hammer and sickle. Current legislation bans inciting hatred on the grounds of political views or ethnic or social status, but does not specifically mention symbols. The maximum penalty under the new law would be three years in prison. "It will be decided case-by-case if an act of displaying the symbols of the occupying regimes incites hatred and thus constitutes violation of the law or not," said Justice Minister Rein Lang. "Nobody is going to ban the Soviet and Nazi symbols from being used in a theatrical performance or in research."<sup>4</sup>

---

<sup>4</sup> "Estonia Proposes Ban on Soviet, Nazi Symbols," *European Jewish Press*, Nov. 30, 2006, available at

Historians remain divided over whether Soviet-era crimes should be equated with Nazi ones, including the Holocaust. Eastern European governments are also split over restrictions on symbols because of concerns about freedom of speech. Estonia, however, was not the first one to take the step of banning both Nazi and Communist-era symbols. Other former communist nations enacting similar bans since the fall of the Iron Curtain include Latvia, Hungary, and Poland. Latvia, Estonia's neighbor, which suffered a similar fate, has a law banning the use of both Soviet and Nazi symbols at public meetings. Hungary also bars use of the Arrow Cross symbol of its WWII pro-Nazi regime, plus the swastika, as well as Soviet symbols. Poland, one of the most serious victims of Nazi barbarity, in article 55 of the Polish Criminal Code criminalizes denial of both Nazi-era and Communist-era crimes.

#### IV. European nations without laws banning denial of the Holocaust and promotion of antisemitic and racist speech

##### A. Scandinavia

The Scandinavian countries to date have put a higher premium on free speech over criminalizing Holocaust denial or hate speech. For example, in Denmark a private radio station -- Radio Oasis -- broadcasts uncensored, right-wing extremist propaganda and does so with the support of state funds under a Danish law guaranteeing state funds for non-commercial radio and television stations. Under that law, Radio Oasis receives a yearly subsidy from the state totaling nearly 50 percent of the station's yearly expenses. Among its offerings, Radio Oasis features songs by neo-Nazi bands and messages guarding what the station perceives to be "the pure, white race of Danes."

##### B. Great Britain

Great Britain likewise does not criminalize Holocaust denial or the public display of Nazi symbols. When Prince Harry, for instance, appeared at a costume party wearing a Nazi uniform, he was roundly criticized for his insensitivity, but it was clear that no British laws were broken. In contrast, when years earlier a partygoer in Germany appeared wearing a Hitler mask, criminal charges were brought against him.

Despite the absence of Holocaust denial laws, Great Britain was the scene of one the most publicized legal events involving Holocaust denial. In 1996, self-described British historian David Irving brought a civil defamation suit against American professor Deborah Lipstadt and Penguin Books stemming from a book on Holocaust deniers written by Lipstadt and published in 1994 by Penguin. In the book, Lipstadt named Irving as a Holocaust denier. Irving's suit claimed that the allegation damaged his reputation.

While Irving began his writing career as a mainstream historian of World War II, his views over the years became more bizarre and he began to ally himself with groups denying the Holocaust, before whom he has made numerous appearances. In 1985, Irving appeared as a defense witness in Ernst Zündel's second trial in Canada. While Irving in the past promulgated the controversial thesis that Hitler had not known about or ordered the destruction of European Jewry, at the Zündel trial he went a step further by nothing that he now was convinced that no gas chambers had been present at Auschwitz. At rally of Holocaust deniers in Calgary, Canada in 1991, Irving announced: "I don't see any reasons to be tasteful about Auschwitz. It's baloney. It's a legend. . . . I say quite tastelessly, in fact, that more women died in the back seat of Edward Kennedy's car . . . than ever died in a gas chamber at Auschwitz."

By the time Irving filed his suit against Lipstadt he was already notorious on the Holocaust denial scene. What made him different from others calling the Holocaust a lie was that he was an author whose works were published by prominent publishing houses. Despite his bizarre pronouncements, he was still viewed by some as a respected military historian. This, according to Lipstadt, made Irving "one of the most dangerous spokespersons for Holocaust denial." He was "familiar with historical evidence," she wrote in her book, and "bends it until it conforms with his ideological leanings and political agenda." Lipstadt went on to describe Irving as a "Hitler partisan wearing blinkers" and an "ardent admirer of Hitler."

After a two-month trial in London, the trial judge issued a 333-page opinion ruling decisively against Irving. The opinion concludes with the following finding:

My conclusion [is] that Irving displays all the characteristics of a Holocaust denier. He repeatedly makes assertions about the Holocaust which are offensive to Jews in their terms and unsupported by or contrary to the historical record.... Irving has for his own ideological reasons persistently and deliberately misrepresented and manipulated historical evidence; that for the same reasons he has portrayed Hitler in an unwarrantedly favourable light, principally in relation to his attitude towards and responsibility for the treatment of the Jews; that he is an active Holocaust denier; that he is anti-Semitic and racist and that he associates with right wing extremists who promote neo-Nazism.

## V. North America

### A. Canada

Section 281 of the Canadian federal criminal code prohibits the promotion of hatred against any "identifiable group," but the statute is notoriously difficult to prosecute. For this reason, for example, it was not used against Ernst Zündel during his trials in Canada. The previous discussion noted the difficulty of trying someone for Holocaust denial in

Canada in light of the decision of the Canadian Supreme Court that laws attempting to criminalize such denial are incompatible with Canadian guarantees of free speech.

## B. The United States

Broad interpretation by the U.S. Supreme Court of the First Amendment guarantees in its constitution has made denial of the Holocaust, promotion of Nazi ideology and dissemination of racist and antisemitic speech completely legal under American law. As a result, most of the Internet websites with neo-Nazi content originate in the United States but are available to anyone in the world with access to the Internet.

One of the most infamous cases confirming this right was the march by the neo-Nazis in the 1970's in the Chicago neighborhood of Skokie, home to many Holocaust survivors. The organizers specifically chose Skokie because of the large survivor population. Despite governmental attempts to stop the march as an affront to the dignity to the survivors and the trauma to be inflicted upon them of seeing Nazis march in their neighborhood, the federal courts allowed the march to proceed.

NGOs in the U.S., such as the ACLU, vigorously defend neo-Nazis whenever their activities are aimed to be curtailed, and the ACLU has been heavily criticized for its work on behalf of neo-Nazis. The ACLU's response is that it will defend anyone's right to free speech, whatever their political affiliation and regardless of the vile content of the speech, since the ACLU only represents one client: The First Amendment.

Since the First Amendment allows Holocaust deniers to disseminate their views with impunity, notorious deniers have found safe refuge in the United States. Ernst Zündel temporarily lived in the United States until he was deported back to Canada for visa violations. In April 2004, an international conference of Holocaust deniers and neo-Nazis convened in honor of Zündel was held in Sacramento.

Home-grown deniers also abound in the United States. Arthur Butz, an engineering professor at Northwestern University in Chicago, has for many years issued texts denying the Holocaust, including the book *The Hoax of the Twentieth Century*. The scholarly-sounding Institute of Historical Review, based in Southern California, likewise freely disseminates materials both in print and on the Internet denying the Holocaust. Its website reproduces the entire text of the booklet *Did Six Million Really Die?* by British Holocaust denier Richard Verrall, (written under the pseudonym Richard E. Harwood), and published by Ernst Zündel in 1974.

## VI. Muslim World

While every part of the world seems to have some individual or group espousing Holocaust denial – Australia, for example, has Frederick Toben and his scholarly-sounding Adelaide Institute – a major region from where Holocaust denial is regularly emanated is the Muslim world.

This includes Holocaust denial not only coming from countries with majority Muslim populations like the Arab states, Iran, Indonesia and Malaysia, but also pronouncements from Muslim leaders in the West. In July 2006, Sheikh Taj Aldin Alhilali, the mufti of Australia and a member of Prime Minister John Howard's Muslim Community Reference Group, dismissed the Holocaust as a "Zionist lie" in a series of fiery sermons.

Muslim-majority countries, however, seem to have the most frequent and most consistent pattern of Holocaust denial pronouncements, using statements first made by Holocaust deniers in the West. The most frequent assertion questions the number of Jews killed during World War II, and books such as *The Hoax of the Twentieth Century* and *Did Six Million Really Die?* have been translated into Arabic and are widely sold.

In 2005, the rhetoric acquired a new spokesperson: Iranian President Mahmoud Ahmadinejad. In a speech made that December, Ahmadinejad labeled the Holocaust a "myth" and a "fairy tale." In a March 2006 speech he again denied the Holocaust, adding this time:

They have fabricated a legend under the name Massacre of the Jews, and they hold it higher than God himself, religion itself and the prophets themselves. If somebody in their country questions God, nobody says anything, but if somebody denies the myth of the massacre of Jews, the Zionist loudspeakers and the governments in the pay of Zionism will start to scream.<sup>5</sup>

These statements, coming in the aftermath of his earlier statement in October 2005 calling for Israel to be "wiped off the map" caused a large outcry in the West, with political leaders and parties loudly condemning Ahmadinejad's remarks.

Ahmadinejad's speeches were followed by a Holocaust cartoon contest held in Tehran seeking to mock the Holocaust. The contest, launched by an Iranian newspaper, was publicized as a response to the Danish cartoons of the Prophet Muhammad that sparked rage among Muslims worldwide.

On December 11, 2006, Iran held a conference questioning the Holocaust. As reported by the *International Herald Tribune*, set to attend the conference was an Israeli Arab Muslim lawyer from Nazareth, Khaled Kasab Mahameed, who aimed to directly confront the phenomena of Muslim Holocaust denial. According to Mahameed,

Instead of trying to understand the Holocaust and learn something from it, they choose to deny it. . . . I'm going to tell them that there is no argument about the facts, and that they must try to understand how the Holocaust

---

<sup>5</sup> "Ahmadinejad: Holocaust a myth," *AlJazeera.net*, March 16, 2006, - available at <http://english.aljazeera.net/news/archive/archive?ArchiveId=17019>.



has shaped the positions of the Jews, of Europe, of America. I will tell them they must internalize its meaning and not say it didn't happen.<sup>6</sup> Iran refused Mahameed a visa to present his point of view. The speaker of rosters did include former American Klan leader David Duke, French Holocaust denier Robert Faurisson and Australian denier Frederick Toben.

The Tehran conference was roundly condemned. UN Secretary General Kofi Annan announced that he deplores any conference that sought to cast doubt on the reality of the Holocaust. The European Union's top justice official described the conference as "an unacceptable affront" to victims of the World War II genocide. British Prime Minister Tony Blair denounced it as "shocking beyond belief." French Foreign Minister Philippe Douste-Blazy called the conference "quite simply not acceptable." German Chancellor Angela Merkel said her country repudiated it "with all our strength. . . ." "We absolutely reject this. Germany will never accept this and will act against it with all the means that we have." The last statement is particularly important, since it came from the nation most responsible for the Holocaust.

## VII. Which way is best?

Proponents of vigorous prosecution of neo-Nazis, racist and Holocaust deniers argue that such laws and their strict enforcement is necessary to prevent the reemergence of Nazism, which, in a repeat of the events in pre-war Germany, is particularly attractive to individuals living in countries where unemployment and social dissatisfaction is high. Transitional societies are particularly vulnerable, and the post-Communist societies face the most acute problems. For example, even though 20 million Soviets perished during World War II following the Nazi invasion of 1941, neo-Nazi groups are rampant in today's Russia and especially attractive to the disaffected youth.

Referring both to denial of the Holocaust and the Armenian genocide, Hilda Tchoboian, president of the European Armenian Federation, explained that "the hydra of denial is a tumor on freedom of expression."<sup>7</sup> According to columnist Hans Rauscher of the Vienna newspaper *Der Standard*, "Denial of the Holocaust is not an opinion, it is a political act which tries to bring Nazi thought into the mainstream."<sup>8</sup>

Supporters of Holocaust denial laws also contend that these laws are necessary more than ever as the number of Holocaust survivors, eyewitnesses to the events, dwindles and the events recede into history. As a result, supporters contend, denial of the Holocaust is

---

<sup>6</sup> "Israeli Muslim to take on Holocaust denial at Iran conference," *International Herald Tribune*, November 17, 2006, available at

[http://www.ihf.com/articles/ap/2006/11/17/africa/ME\\_GEN\\_Israel\\_Holocaust\\_Conference.php](http://www.ihf.com/articles/ap/2006/11/17/africa/ME_GEN_Israel_Holocaust_Conference.php).

<sup>7</sup> "Armenia Hails French Genocide Vote Amid Turkish Fury," *ArmeniaLiberty.org*, October 12, 2006, available at <http://www.armenialiberty.org>.

<sup>8</sup> Mark Lander, "Austrian Court Frees Jailed Holocaust Denier," *New York Times*, Dec. 20, 2006.

growing and such views are becoming more mainstream. Such supporters even argue for expansion of such laws to criminalize trans-border dissemination through the Internet, since the reach of Holocaust denier message in the current era of globalization has increased exponentially.

Opponents argue that such laws are incompatible with a democratic society. The hallmark of a true democracy, they argue, is not just protection of speech one agrees with but speech is which most hateful and despicable.

Like proponents, those opposed to such laws also make use of the slippery slope argument by contenting that criminal prosecution of Holocaust deniers, neo-Nazis and other racists can lead to prosecution of more benign activities and speech. Armenian-American student activist Garin K. Hovannisian, in direct response to Hilda Tchoboian's statement above, argues:

Genocide denial might be a tumor on truth, memory, or even human dignity, but it's not even a pimple on the freedom of expression. It's an exercise - however false or disgusting - of that freedom,. . .A government that has the power to punish lies also has the power to punish truth (consider Turkey's law that punishes those who denigrate "Turkishness") and, really, to punish anything it pleases.<sup>9</sup>

Some critics oppose such laws on practical grounds, arguing that prosecution of such individuals gives them a forum to disseminate their vile views and, since such trials are covered by the media, tons of free publicity.

For example, in the aftermath of his 1985 conviction in Canada, Zündel appeared for sentencing in black-face (indicating that white men could not receive justice in Canada), and carrying a cross, also inscribed with a "Freedom of Speech" motto. At a well-covered news conference, Zündel noted that the trial "cost me \$40,000 in lost work -- but I got \$1 million worth of publicity for my cause. It was well worth it."<sup>10</sup>

Deborah Lipstadt, in reaction the jailing of David Irving in Austria, explained that even though she abhors Irving's message, she is opposed to his imprisonment since it makes him, in some eyes, a hero of free speech and a martyr to fellow deniers.

Ultimately, such laws must be examined in their context. In the United States, the display of Nazi symbols may not need to be criminalized since the Holocaust did not take place on American soil. However, public display of a hate symbol exclusive to the United States – cross burning – can in certain instances be criminalized, according to a 2003 decision of the U.S Supreme Court (Virginia v. Black, 538 U.S. 343 (2003) <sup>11</sup>),

---

<sup>9</sup> Garin K. Hovannisian, "The Folly of Jailing Genocide Deniers," *Christian Science Monitor*, November 6, 2006.

<sup>10</sup> Cited and quoted by the ADL in [http://www.adl.org/learn/Ext\\_US/zundel.asp?xpicked=2&item=zundel](http://www.adl.org/learn/Ext_US/zundel.asp?xpicked=2&item=zundel).

<sup>11</sup> As explained by Justice O'Connor: "The First Amendment permits Virginia to outlaw cross burnings done with the intent to intimidate because burning a cross is a particularly virulent form of intimidation.

because of the potent symbol which a burning cross has played in the persecution of African-Americans since the end of the American Civil War and abolition of slavery.

---

Instead of prohibiting all intimidating messages, Virginia may choose to regulate this subset of intimidating messages in light of cross burning's long and pernicious history as a signal of impending violence. A ban on cross burning carried out with the intent to intimidate is fully consistent with the [Supreme] Court's earlier holding[s]" (quoting from summary of the opinion).